

1 Law Offices of
2 **MICHAEL W. CARMEL, LTD.**
3 80 East Columbus Avenue
4 Phoenix, Arizona 85012-2334
5 Telephone: (602) 264-4965
6 Arizona State Bar No. 007356
7 Facsimile: (602) 277-0144
8 E-mail: Michael@mcarmellaw.com

9 Attorney for The Biltmore Bank of Arizona

10
11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 In re:

15 STANLEY THOMAS LUND and
16 JUNE MARIE LUND, aka LUND
17 MORTGAGE,

18 Debtors.

19 THE BILTMORE BANK OF ARIZONA,

20 Plaintiff,

21 vs.

22 STANLEY THOMAS LUND and
23 JUNE MARIE LUND,

24 Defendants/Debtors.

Chapter 7 Proceedings

Case No. 2:09-bk-18416-CGC

Adv. No. 2:09-ap-01577-CGC

JOINT PRETRIAL STATEMENT

Date of Trial: September 13, 2010

Time of Trial: 9:00 a.m.

Courtroom #601

25 The parties, by and through their respective counsel undersigned, hereby submit their
26 Joint Pretrial Statement in connection with the above adversary proceeding.

27 **I. NATURE OF SUIT**

28 This adversary proceeding is a Complaint to determine dischargeability of debt, and to
deny discharge. The Court has jurisdiction pursuant to 28 U.S.C. § 157(a) (b) (2) (I), and (J).

1 **II. UNCONTESTED FACTS**

2 1. Debtors' bankruptcy petition lists Lund Mortgage, Inc. ("Lund Mortgage") as an
3 "AKA" for the Debtors.

4 2. At all relevant times herein, Lund Mortgage was a mortgage broker licensed by the
5 Arizona Department of Financial Institutions.

6 3. Stanley Lund is or was the President, Director, and a key employee of Lund
7 Mortgage.

8 4. Lisa Lund is Stanley Lund's daughter and is or was the Vice President and a key
9 employee of Lund Mortgage.

10 5. The Biltmore Bank of Arizona ("Biltmore") and Lund Mortgage are parties to a
11 "Wholesale Broker Agreement," which sets forth the terms upon which Biltmore agreed to fund
12 loans originated and submitted to Biltmore by Lund Mortgage.

13 6. A contract dispute arose and Biltmore filed suit against Lund Mortgage in March
14 2007, in the Arizona Superior Court, County of Maricopa ("Superior Court").

15 7. On or about July 1, 2008, the Superior Court granted partial summary judgment in
16 Biltmore's favor on the issue of liability.

17 8. On January 27, 2009, the Superior Court granted Biltmore's motion for summary
18 judgment on the issue of damages, finding that as a result of Lund Mortgage's breach of the
19 Wholesale Broker Agreement, Biltmore suffered damages in the principal amount of
20 \$291,046.52.

21 9. On or about May 14, 2009, the Superior Court entered a final judgment against
22 Lund Mortgage, awarding Biltmore the principal amount of \$291,046.52 and \$10,245.00 for its
23 incurred attorney fees and costs, plus post-judgment interest at the statutory rate of ten percent
24 (10%) on both amounts.

1 10. On or about February 18, 2009. Lund Mortgage Team was incorporated by Lisa
2 Lund and non-party Matt Oliver.

3 11. The Arizona Department of Financial Institutions granted a mortgage broker's
4 license to Lund Mortgage Team, on or about April 30, 2009.

5 12. The purpose and operations of Lund Mortgage Team are virtually identical to the
6 purpose and operations of Lund Mortgage.

7 13. Lund Mortgage Team and Lund Mortgage are both mortgage brokerage companies
8 that assist customers in obtaining home loans.

9 14. Lund Mortgage Team operates at 8765 W. Kelton Lane, Suite C-1, Peoria,
10 Arizona 85382; lists its telephone number as (623) 875-9940; and uses as its website the domain
11 name www.lundmortgage.com.

12 15. Lund Mortgage operated at 8765 W. Kelton Lane, Suite C-1, Peoria, Arizona
13 85382; listed its telephone number as (623) 875-9940; and used as its website the domain name
14 www.lundmortgage.com.

15
16
17
18 **III. CONTESTED FACTS**

19 1. Whether the Asset Transfers were a violation of the Arizona Trust Fund Doctrine;
20 and, to the extent they were in violation of the Trust Fund Doctrine, in what amount.

21 2 Whether Stanley Lund caused the transfers to occur with intent to hinder, delay, or
22 defraud Lund Mortgage's creditors, including Plaintiff.

23 3. Whether Debtor Lund Mortgage received any consideration from Lund Mortgage
24 Team, Inc. for the transfers.

25 4. Whether soon after the Superior Court granted Biltmore's motion for summary
26 judgment on the issue of damages, Stanley Lund began taking steps to transfer the corporate
27
28

1 assets of Lund Mortgage to a new entity, "Lund Mortgage Team, Inc." ("Lund Mortgage
2 Team").

3 5. Whether Lund Mortgage Team uses the same marketing plan as Lund Mortgage,
4 touting its professionals' availability "outside of the daily 9 to 5 routine" and using the same
5 advertising slogan, "We're available when you are ...nights and weekends!"
6

7 6. Whether the content contained on Lund Mortgage Team's website is virtually
8 identical to that contained on Lund Mortgage's website.

9 7. Whether Lund Mortgage Team's website lists Stanley Lund as the company's
10 President/CEO and its employees as Lisa Lund and non-party Kara Smith.

11 8. Whether Stanley Lund, Lisa Lund, and Kara Smith were listed on Lund
12 Mortgage's website as the Company's President/CEO and its employees, respectively.
13

14 9. Whether Stanley Lund and Lisa Lund, acting in concert, transferred virtually all of
15 Lund Mortgage's corporate assets to Lund Mortgage Team and/or another insider company, or to
16 themselves, for less than sufficient consideration.

17 10. Whether among those assets believed to be transferred from Lund Mortgage to
18 Lund Mortgage Team or another insider company are: (1) customer-related intangible assets such
19 as customer and contact lists, customer records, customer relationships, and customer application
20 files; (2) human-capital related intangible assets such as an in-place workforce, skilled and
21 knowledgeable key employees including, but not limited to, Stanley Lund, Lisa Lund, and Kara
22 Smith; (3) goodwill-related intangible assets such as the business's reputation, patronage, and
23 name recognition; and (4) tangible assets such as office furniture and electrical equipment,
24 including computers, telephones, and other office-related machines ("Asset Transfers").
25

26 11. Whether Lund Mortgage became insolvent in or about September 2007.
27
28

1 12. Whether after Lund Mortgage became insolvent, Stanley Lund caused Lund
2 Mortgage to transfer to Stanley Lund (or his spouse or daughter) funds for corporate loan
3 repayments and/or equity distributions (“Monetary Transfers”).
4

5 **IV. LEGAL ISSUES**

6 1. Whether Defendants’ discharge should be denied pursuant to 11 U.S.C. § 727 (a)
7 (2).

8 2. Whether the amounts due Plaintiff from Defendants should be excepted from
9 discharge, pursuant to 11 U.S.C. § 523(a) (4).

10 3. Whether Plaintiff is entitled to attorney’s fees incurred herein.

11 **V. WITNESSES**

12 Plaintiff intends to call the following witnesses:
13

14 1. Any and all witnesses listed by Defendants.

15 2. Stanley Thomas Lund

16 3. June Marie Lund

17 4. Lisa Lund

18 5. Kara Smith

19 6. Representative of The Biltmore Bank of Arizona
20

21 Defendants intend to call the following witnesses:

22 1. Stanley Thomas Lund

23 2. June Marie Lund

24 3. Lisa Lund

25 4. Kara Smith

26 5. Tillman Noles
27
28

1 **VI. DOCUMENTS**

2 Plaintiff intends to introduce the following documents as an exhibit at trial:

- 3 1. Any and all documents listed by Defendants.
- 4 2. State and Federal Income Tax Returns for Lund Mortgage, Inc. for the years 2007,
- 5 2008, and 2009.
- 6 3. State and Federal Income Tax Returns for Debtors Stanley Lund and June Lund
- 7 for the years 2007, 2008 and 2009.
- 8 4. Affidavit of Jeffrey P. Gaia in Support of Motion for Partial Summary Judgment.
- 9 5. State of Arizona Corporation Commission Annual Reports and Certificates of
- 10 Disclosure for Lund Mortgage Team, Inc.
- 11 6. State of Arizona Corporation Commission Annual Reports and Certificates of
- 12 Disclosure for Lund Mortgage, Inc.
- 13 7. Transcript of Rule 2004 Examination of Stanley Thomas Lund, dated November
- 14 12, 2009, along with all Exhibits to the examination.
- 15 8. Deposition of Lisa Marie Lund, dated May 25, 2010, along with all Exhibits
- 16 attached to the Deposition.
- 17
- 18
- 19

20 Defendants intend to introduce the following documents as an exhibit at trial:

- 21 1. All Exhibits listed by Plaintiffs.

22 DATED this 2nd day of September 2010.

23 MICHAEL W. CARMEL, LTD.

24 /s/ Carmel, M.W. (007356)
25 Michael W. Carmel
26 80 East Columbus Avenue
27 Phoenix, Arizona 85012-2334
28 Attorney for Plaintiff

JOSEPH W. CHARLES, P.C.

/s/ Charles, J.W. (3038)
Joseph W. Charles
5704 West Palmyra Avenue
P.O. Box 1737
Glendale, Arizona 85311
Attorney for Defendants/Debtors